LIM MING WHY & ANOR

v.

LIM TENG LEE

HIGH COURT BORNEO, KOTA KINABALU
WAN MOHAMED J
[CIVIL SUIT NO. 722 OF 1978]
20 JANUARY 1981

LANDLORD AND TENANT: *Claim by co-owners for vacant possession - Section 21(2)(h) of the Rent Control (Business Premises) Enactment 1966, Sabah - Monthly tenancy - Premises required by one co-owner only - Cause of action O. 18 r. 19(1).*

The plaintiffs who were co-owners of a shop house No. 134 Jalan O.K.K. Awang Besar, Labuan Town, claimed for recovery of possession of the said premises against the defendant who was a monthly tenant under s. 21(2) (h) of the Rent Control (Business Premises) Enactment 1966, Sabah.

At the start of hearing of the case, the counsel for defendant raised a preliminary objection on point of law that the plaintiffs had no cause of action against the defendant under the said provision. The above provision was in para materia with s. 12(1) (f) of the control of Rent Ordinance 1966. In the case before the Court only one of the co-owners *viz* plaintiff No. 1 required the premises for his occupation to run a coffee shop business. In fact, during interlocutory application by the plaintiff to enter judgment on the ground that the statement of defence disclosed no defence to claim which was earlier dismissed, plaintiff No. 2 in his affidavit stated as follows in paragraph 10:-

> That it is my co-plaintiff's intention to use the said premises for the continuance of his coffee shop business and that there has been no change by purchase in the ownership of the said premises since the service of the said notice to quit.

The plaintiff argued that it was premature to say at that state that the premises were required solely for occupation of the 1st plaintiff. The second plaintiff was the brother in law of the 1st plaintiff and as such the latter was a member of the family of the 2nd plaintiff. The defendant submitted in reply it had been held previously that even a brother was not a member of one's family and the 1st plaintiff cannot be a member of the family of the 2nd plaintiff, his brother-in-law. It was also found that the 2nd plaintiff was not a partner in the business run by the 1st plaintiff.

Held:

[1] That the plaintiffs had no cause of action against the defendant as only one of the co-owners required the premises for occupation. The 2nd plaintiff, although a brother-in-law of the 1st plaintiff cannot be taken to be a member of the former's family.

Legislation referred to:
Control of Rent Ordinance 1966, s. 12(1)(f)
Rent Control (Business Premises) Enactment 1966 Sabah, s. 21(2)(h)

For the plaintiff - Encik Ansan Abdullah
For the defendant - Mr. Yap Hau Pehn

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Also found at [1981] CLJ 131